

FILED

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

08 CV 0944 BEN NLS

) CASE NO.:
) COMPLAINT FOR DISCRIMINATION IN
) EMPLOYMENT:

) 1. AGE DISCRIMINATION
) 2. NATIONAL ORIGIN

)DISCRIMINATION
)3. DEFAMATION continuing
)4.FRAUD continuing:INTENTIONAL
)MISREPRESENTATION/CONCEALMENT
)5.CONSPIRACY WITH INTENT TO
)DEFRAUD

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I

1. This is a complaint by a former employee against her ex-employer for damages arising out of an unlawful suspension from her employment for an alleged fraud; discrimination based on age and national origin. Plaintiff seeks compensatory damages. This Court has jurisdiction under Age Discrimination in Employment Act of 1967, as amended 29 U.S.C. Section 621 et seq. (ADEA);

1 The ADEA prohibits employment discrimination against 40 years of
2 age or older, section 623 (1); Title
3 VII of the Civil Rights Act of 1964, as amended by the Civil
4 Rights Act of 1991, 42 U.S.C. §§2000e, et seq. (Title VII), and
5 42 U.S.C. §§ 1981, et seq.; Section 703 (a)(1) of the Civil
6 Rights Act of 1964, 42 U.S.C. 2000e-3(a)(1) and the Federal
7 Torts Claims Act Title 28 U.S.C. §267(a) Plaintiff, Delia V.
8 Opinion, filed an Administrative Claim with Equal Employment
9 Opportunity Commission on or about February 1, 2006. This case
10 has been under an intensive investigation and cooperative
11 discovery with the EEOC no decision was rendered.

12 2. Defendant Navy/Marine Corps(Agency) is an Agency of the
13 United States Government.

14 3. Plaintiff, Delia V. OPINION, hereinafter referred to as
15 (Plaintiff) was a federal employee worked as an Operations
16 Assistant for the Marine Corps Community Services(MCX/MCCS)
17 aboard Marine Corps Air Station (MCASD) Miramar, San Diego,
18 California. On or about December 20, 2005 she was suspended from
19 her employment indefinitely, and coerced to retire by fear and
20 intimidation of being charged with fraud; unlawfully accused of
21 misconduct (fraudulently making an unauthorized purchase of a
22 diamond ring). The unlawful accusations, and coercion of
23 retirement/resignation was approved and promoted by upper
24 management defendants, in addition to Sales Associates Marifi
25 Szumonski(Ms.Szumonski) and Ligaya Davis(Ms. Davis).

26 4. At all relevant times herein, Plaintiff, age 53 at that
27 time, was a resident of the State of California and was
28

1 employed by the United States Navy and Marine Corps as a an
2 Operations Assistant for the MCX/MCCS.

3 5. Defendant Marifi Szumowski (Ms. Szumonski) was a senior
4 Sales Associate for MCX/MCCS, age 36. Defendant, Ms. Davis, age
5 40 hereinafter Ms. Davis was an employee of the MCX/MCCS, and
6 was the Sales Associate who sold Plaintiff a diamond cluster
7 ring on consignment with MXC. At all times herein mentioned Ms.
8 Szumonski and Ms. Davis were residents in the county of San
9 Diego, California.

10 6. Defendant, Bonnie David (Ms. David) was the MCX/MCCS Human
11 Resource Director; was residents in the County of San Diego,
12 California. At all times herein mentioned Ms. David was a
13 resident in the County of San Diego, California.

14 7. On December 19, 2005, Archara Bowen, drafted the Notice of
15 suspension; and was present during the questioning of the Sales
16 Associate, Ligaya Davis. Ms. Bowen was a Human Resource
17 Specialist, told Plaintiff that she should retire and work
18 somewhere else. At all times herein mentioned, Ms. Bowen was a
19 resident in the County of San Diego, California.

20 8. Defendant Susan Ottobre at all times herein mentioned Ms.
21 Ottobre was a resident in the County of San Diego, California.

22 9. Glo Emde and Terry White continued to process Plaintiff
23 retirement papers, even though she had called to request that
24 she wanted to withdraw her papers.

25 10. Glo Emde (Ms. Emde) was a MCX/MCCS Human Resource Director.
26 On December 22, 2005 Plaintiff talked with Ms. Emde because she
27 had been told to talk to her by Ms. Bowen regarding the
28

1 retirement which Ms. Bowen had suggested. Plaintiff talked to
2 Ms. Emde and Ms. Emde told her to do what Ms. Bowen had
3 suggested, that is, retire.

4 12. Defendant Jack Flanagan (Mr. Flanagan) was the MCX/MCCS
5 Operations Director, signed the Notice of Suspension. At all
6 times herein mentioned, Mr. Flanagan was a resident in the
7 County of San Diego, California.

8 13. Defendant Michael Thomas (Mr. Thomas), was the Loss
9 Prevention Director for the MCX/MCCS. Mr. Thomas, who had been
10 extremely rude and hostile to Plaintiff grabbed paperwork out of
11 her hands, without asking for it during an interview. Mr. Thomas
12 had stated to Plaintiff she was suspended indefinitely and sent
13 Plaintiff home escorted by Glo Emde, Mr. Quinonez and Mr.
14 Thomas. Mr Thomas fabricated, falsified and participated in the
15 conspiracy to obtain false statements and allegations from
16 witnesses. At all times herein mentioned Mr. Thomas was a
17 resident in the County of San Diego, California.

18 14. Defendant Mark Burhart was the Retail Store Director, On
19 December 21, 2005, When Plaintiff called Mr. Burhart he refused
20 to speak to her, because he said he did not have the report and
21 the investigation was ongoing. At all times herein mentioned Ms.
22 Mr. Burhart was a resident in the County of San Diego,
23 California.

24 15. Defendant Remy Songco (Ms. Songco) was the MCX/MCCS retail
25 Operations Manager, age 50, was the supervisor of Plaintiff. At
26 all times herein mentioned, all of these Defendants were
27 employees of the MCX/MCCS. At all times herein mentioned Ms.
28

1 Songco was a resident in the County of San Diego, California.

2 16. Defendant Sandberg & Sikorski(S&S), whose business entity
3 is unknown was doing business and was licensed to do business
4 as a vendor of jewelry at the MCX/MCCS in the County of San
5 Diego.

6 17. Defendant Zenaida Kaspick is a vendor representative for
7 S&S, a fine jewelry concessionaire that operates within the
8 Exchange. Ms. Kaspick, employee for (S&S), managed the business
9 operations in the sale of S&S jewelry at the MCX/MCCS. At all
10 times herein mentioned Ms. Kaspick was a resident in the County
11 of San Diego, California.

12 18. Ms. Theresa Hanrahan (Hanrahan, deceased) managed the
13 Jewelry Department. She (Hanrahan) and Ms. Kaspick provided
14 false information to Marine Corps investigators and Marine Corps
15 personnel and stated that a diamond solitaire ring valued at
16 \$2,399.99 was fraudulently purchased by Plaintiff for 60% off
17 the regular price. Hanrahan purchased a diamond ring on the same
18 day and was given 60% off the regular price, prior to her death.

19 19. Plaintiff is informed and believes that all Defendants were
20 acting within the course and scope of their employment with
21 MCX/MCCS, Marine Corps of the United States Government.

22 20. The true names and capacities of the Defendants named
23 herein as Does 1 through 10, inclusive, whether individual,
24 corporate, associate, or otherwise are unknown to Plaintiff who
25 therefore sues such Defendants by fictitious names under
26 California Code of Civil Procedure § 474. Plaintiff is informed
27 and believes that Doe Defendants are California residents.

1 Plaintiff will amend this Complaint to show such true names and
2 capacities when they have been determined. Each Defendant was an
3 agent of the other Defendants and ratified the conduct of the
4 other Defendants.

5 21. Plaintiff appealed the suspension in a timely manner, but
6 the appeal was never acknowledged. Plaintiff discussed the
7 nonresponse with the EEO Counselor and the EEOC Counselor
8 received the appeal in writing.

9
10 22. On January 17, 2006 Plaintiff called Terry White of the
11 Corporate Human Resource office in Virginia to withdraw her
12 retirement papers because she felt that it was wrong to be
13 forced to retire against her will. Plaintiff explained to Ms.
14 White she wanted to cancel the retirement. Ms. White said that
15 the paper work was not yet received nor processed. She advised
16 Delia to work with local Human Resource Department. Glo Emde and
17 Bonita David to cancel her retirement. Plaintiff folloed the
18 advice of ms. White. However, Defendants would not approve to
19 withdraw her retirement.
20
21

22 II

23 FIRST CAUSE OF ACTION

24 Discrimination/AGE:

25 23. The allegations of paragraph 1-22 are re-alleged and
26 incorporated herein by reference. This cause of action is
27 pleaded against all Defendants.

28 24. Plaintiff was at all material times an employee for

1 MCX/MCCS for more than twenty nine years, and was protected
2 under the California Fair Employment and Housing Act (FEHA);
3 California Government Codes; in particular, Govt C §12941,
4 prohibiting age discrimination and Govt C §12940, prohibiting
5 National Origin discrimination in employment as well as the Age
6 Discrimination in Employment Act of 1967(ADEA). At all times
7 herein mentioned, all Government codes aforementioned were in
8 full force and effect and was binding on Defendants.
9

10
11 25. On December 20 2005, Plaintiff was age 53, and was
12 unlawfully placed on emergency suspension indefinitely by
13 Michael Thomas. Loss prevention completed the investigation and
14 concluded fraud against the Plaintiff. Shortly thereafter
15 Plaintiff was told to retire by Ms. Bowen, Ms. Emde and approved
16 by Bonita David.
17

18 26. At the time that Plaintiff was placed under suspension and
19 subsequently coerced to retire, she had been rated
20 "exceptionally reliable and trustworthy"; her work was wholly
21 satisfactory; and she was rated competent, and diligent in her
22 performance to the profit of Defendants. Plaintiff was
23 subjected to forced retirement by fear and intimidation of being
24 accused of misconduct and complete loss of retirement benefits.
25

26 27. Defendants concocted a conspiracy to accuse Plaintiff of
27 fraud for making an unauthorized purchase of a diamond solitaire
28 ring and was subjected to less favorable treatment because she,

1 over the age of 40. Defendants claim that Plaintiff was placed
2 on suspension indefinitely due to fraud, an alleged unauthorized
3 purchase of a diamond solitaire, when the ring she purchased
4 was not diamond solitaire. Defendants' claim that Plaintiff was
5 placed on suspension indefinitely due to fraud, was a pretext
6 designed to conceal Defendants' practice of discriminating
7 against Plaintiff on the basis of her age and National Origin.
8 Defendants had demonstrated a pattern of terminating employees
9 in certain groups, over 40.
10
11

12 28. Mr. Burhart approved the resignation/ retirement for the
13 Plaintiff.

14 29. Plaintiff believes and thereon alleges that her age was a
15 factor in the Agency's decision to place her under suspension
16 and coerce her to retire under intimidation, coercion and fear.
17 Agency placed plaintiff on suspension indefinitely following
18 false allegations of misconduct of fraud.
19

20 30. Agency's Human Resource employees, Ms. Bowen and Ms. Emde,
21 told Plaintiff to retire and subsequently refused to allow
22 Plaintiff to withdraw her retirement request more than three
23 weeks after the effective date of Plaintiff's resignation, even
24 though the Plaintiff's papers had not yet been processed nor
25 submitted to the corporate office in Virginia. Plaintiff was
26 treated less favorably than others similarly situated. Such
27 discrimination was in violation of California Govt C 12941 and
28

1 the ADEA and resulted in damage and injury to Plaintiff.
2 Plaintiff did not make an unauthorized purchase and committed no
3 fraud. Plaintiff purchased a ring which had been advertised
4 with a 60% discount and she did not buy a diamond solitaire.
5

6 31. Plaintiff had seen the ring in question advertised in a
7 MCX/MCCS flyer and asked Ms. Davis if she could purchase the
8 ring, which had a tag on it, that it was on sale for 60% off.
9 The ring which Plaintiff purchased had been advertised in a
10 flyer and did not look like other diamond solitaires advertised
11 in the MCX/MCCS flyer. The investigation was initiated because
12 of information provided to MCX/MCCS management by Ms. Kaspick, a
13 vendor from S&S Jewelry.
14

15 32. As a proximate result of Defendants' conduct, Plaintiff has
16 suffered and continues to suffer substantial losses in earnings
17 and other employment benefits; incurred losses in seeking and
18 performing substitute employment and losses she would have
19 received had Defendants not taken such adverse employment
20 actions against her.
21

22 33. As a proximate result of Defendants' conduct, Plaintiff has
23 suffered and continues to suffer embarrassment, anxiety,
24 humiliation, and emotional distress, all to her damage in amount
25 according to proof.
26

27 34. Defendants committed the acts alleged herein maliciously.
28 fraudulently, and oppressively, in bad faith, with the wrongful

1 intention of injuring Plaintiff, from an improper and evil
2 motive amounting to malice, and in conscious disregard of
3 Plaintiff's rights. Plaintiff thus is entitled to recover
4 punitive damages from Defendants in an amount according to
5 proof.
6

7 35. As a result of Defendants' discriminatory acts as alleged
8 herein, Plaintiff is entitled to reasonable attorney's fees and
9 costs of suit as provided by United States and California
10 Government Code.
11

12 36. WHEREFORE, Plaintiff requests relief as hereinafter
13 provided.
14

15 III

16 SECOND CAUSE OF ACTION

17 DISCRIMINATION/ NATIONAL ORIGIN

18 37. The allegations of paragraphs 1 to 36 are re-alleged and
19 incorporated by reference. This cause of action is pleaded
20 against all Defendants.
21

22 38. Plaintiff is Filipino. Some employees who were similarly
23 situated have been investigated and allowed to remain employed
24 during the investigation. There has been a pattern of
25 humiliating, intimidating, chastisement and accusatory actions
26 by Loss prevention personnel toward Filipino employees over
27 forty. Mr. Thomas has subjected other similarly situated
28 Filipinos, who have been questioned on an alleged misconduct, to
humiliation, intimidation, chastisement and false accusations.
Defendants sought to find reasons for getting Plaintiff to

1 resign and or retire because she was older and Filipino. The
2 reasons given by Defendants for Plaintiff's indefinitely
3 suspension were pretext. Defendants failed to take reasonable
4 steps to prevent the discrimination against Plaintiff from
5 occurring, and to take immediate and appropriate corrective
6 action to remedy the discrimination as described herein.

7 39. Agency has failed to follow their disciplinary procedure
8 against Plaintiff such as issuing a formal warning, providing
9 counseling, or imposing probation, or suspension.

10 40. WHEREFORE, Plaintiff requests relief as hereinafter
11 provided.

12
13 IV
14 THIRD CAUSE OF ACTION
15 [Defamation]

16 41. The allegations of paragraph 1-40 are re-alleged and
17 incorporated herein by reference. This cause of action is pleaded
18 against all Defendants.

19 42. By the acts described herein, Defendants caused to be
20 published false and unprivileged communications tending directly
21 to injure Plaintiff in her business and professional reputation.

22 43. On or about December 20, 2005 and continuing Plaintiff was
23 indefinitely suspended and coerced to retire; defendants
24 intentionally stated to persons in the company, as well as
25 outside the company that Plaintiff had engaged in conduct which
26 adversely reflected on her trade occupation. Defendants
27 specifically communicated that Plaintiff had made an
28 unauthorized purchase of a diamond ring as follows:

a. Ms. Szumonski stated to Mr. Quinonez of Loss prevention that

1 Plaintiff had approached her a few days before December 13, 2005
2 and asked whether the S&S ring would be 60% off. Ms. Szumonski
3 made a false statement to Loss Prevention when she said, "the
4 morning of the sale she told Plaintiff that the ring was not
5 included under the 60% discount sale."

6 b. Ms. Szumonski and Ms. Davis falsely stated, among others,
7 in particular to Mr. Ruben Quinonez and Michelle Albrecht, other
8 management personnel and Loss prevention personnel that the ring
9 in question was not included in the 60% sale.

10 c. Ms. Davis falsely stated that she sold the ring to
11 Plaintiff because Plaintiff had said, "Remy Songco said the
12 ring was included in 60% discount." Plaintiff had requested to
13 buy the ring, advertised in a MCX/MCCS flyer with a 60% discount
14 from the Sales Associate Ms. Davis. Plaintiff did not tell
15 anyone that Ms. Songco had said the diamond was not included in
16 the 60% discount sale. Ms. Davis and Ms. Kaspick, and Ms.
17 Szumonski made false statements to management and other
18 employees that that Plaintiff said to Ms. Davis that, "Ms.
19 Songco had approved the 60% sale price of the ring."

22 d. Ms. Davis signed a false statement prepared by Loss
23 Prevention (Mr. Quinonez) that Plaintiff had said Remy Songco
24 had approved the 60% discount, knowing that this was something
25 the MCX/MCCS Retail managers did not do and were not authorized
26 to do. Ms. Davis has stated that after the initial interview Mr.
27 Quinonez to sign a written statement outlining what was
28 discussed. "I was not comfortable signing anything until after I

1 received counsel from my attorney. After speaking with my
2 attorney I returned and agreed to sign the statement.

3 e. Ms. Davis falsely stated to Mr. Quinonez on December 19,
4 2005 that she had told the Plaintiff she was not sure the S&S
5 ring was on sale, but that after the Plaintiff, "told her she
6 asked Remy and Remy said it was included." Ms. Davis falsely
7 stated to Ms. Hanrahan she was intimidated by the Plaintiff into
8 selling the S&S ring at the authorized 60% discount.

9 f. Ms. Davis stated in her deposition that S&S pretags all
10 their jewelry and that when they're in the showcase, they have
11 tags and that is the correct sale price for that day. Ms. Davis
12 stated, among others, that the management or manager of S&S
13 would decide which item is going to be placed on the brochure;
14 and that Remy Songco did not have authority to give a certain
15 discount to S&S jewelry pieces. Ms. Davis stated that each piece
16 of jewelry that is being sold by S&S was always tagged with the
17 correct price and that the price was there on the ring. Ms.
18 Davis knew the price (60% discount was on the ring.

19 g. On December 14, 2005 Ms. Ottobre forwarded Ms. Hanrahan's
20 email to the MCX/MCCS Human Resources Office adding that she
21 told Plaintiff the ring was not included in the sale.

22 h. Ms. Kaspick stated to management and other personnel that
23 Plaintiff had made an unauthorized purchase of the diamond ring,
24 when she knew full well that the diamond ring was tagged at a
25 60% discount. Ms. Kaspick further falsely reported to management
26 that Ms. Szumonski, the jewelry supervisor, had previously told
27 Plaintiff that the ring would not be included in the 60% sale.
28

1 i. Mr. Thomas, Mr. Flanagan and Mr. Quinonez conspired among
2 themselves to obtain false allegation from witnesses.

3 j. Ms. Songco falsely stated to management and to Human
4 Resources that she had told Plaintiff that the diamond ring was
5 not included in the 60% sale.

6 k. On December 13, 2007 Ms. Hanrahan sent her supervisor,
7 Suzanne Ottobre an email reporting false information provided to
8 her by Zenaida Kaspick.

9 44. Plaintiff is further informed and believes that at the
10 time of her suspension and coerced resignation/retirement,
11 managers intentionally told Human Resources that Plaintiff had
12 engaged in misconduct and made false statements an unauthorized
13 statements in the purchase of a diamond ring. This information
14 implied that Plaintiff was a liar, an incompetent and an
15 untrustworthy employee.
16

17 45. The information provided to Human Resources and others was
18 false, and management and sales Associates knew it to be false
19 at the time they were made. In fact, Plaintiff had not engaged
20 in misconduct and was at all material times a competent and
21 trustworthy employee.

22 46. Plaintiff is informed and believes that at all times herein
23 Agency management ratified and republished the above-described
24 statements with knowledge that they were false.

25 47. The defamatory statements set forth above in paragraph 43,
26 were ratified and republished to other employees and others to
27 force Plaintiff to resign and/or retire and to obtain the favor
28

1 of management. Defendants published these statements with malice
2 express and implied malice with the design and intent to injure
3 Plaintiff in her good name, reputation and employment.

4
5 48. As a proximate result of the defamatory statements made by
6 all defendants have caused Plaintiff has suffered injury to her
7 business and professional reputation, and further has suffered
8 and continues to suffer embarrassment, humiliation, and anguish
9 all to her damage in an amount according to proof.

10
11 49. Defendants committed the acts alleged herein maliciously,
12 fraudulently, oppressively, with the wrongful intention of
13 injuring Plaintiff, from an improper and evil motive amounting
14 to malice, and in conscious disregard of Plaintiff's rights.
15 Plaintiff is entitled to recover punitive damages from
16 Defendants and each of them in an amount according to proof.

17
18 50. WHEREFORE. Plaintiff prays for damages as hereinafter
19 provided.

20
21 V

22 FOURTH CAUSE OF ACTION CAUSE OF ACTION

23 [FRAUD: Concealment and Intentional Misrepresentation]

24 51. Plaintiff reallege and incorporate herein Paragraphs 1-50
25 as though fully set forth herein.

26 52. On or about December 20, 2005 and continuing, Defendants,
27 and each of them, concealed and suppressed material facts which
28 should have been disclosed when Defendants told management that
Plaintiff had made an unauthorized purchase of a diamond ring.

1 53. On or about December, 2005 and continuing all Defendants
2 prevented Plaintiff from discovering the concealed or suppressed
3 facts that the diamond ring was included in the 60% sale.
4 Management failed to disclose information with respect to the
5 fact that the diamond ring in question had been pre-tagged with
6 a discount of 60% and placed in the showcase by S&S and Ms.
7 Kaspick. Also the ring in question is not a diamond solitaire
8 but rather it was a cluster ring.

9 54. Defendants and each of them concealed or suppressed these
10 facts with the intent to defraud and induce Plaintiff to resign
11 and or retire and to obtain favor from the Agency management. At
12 the time that Plaintiff acted, Plaintiff was unaware of these
13 concealed or suppressed facts and would not have taken the
14 action if Plaintiff had known the facts.

15 55. On or about December 20, 2005 and continuing Managers made
16 false statements and or facilitated the transfer of false
17 statements and lies, among others, as follows:

18 a. Ms. Szumonski stated to Mr. Quinonez of Loss prevention that
19 Plaintiff had approached her a few days before December 13, 2005
20 and asked whether the S&S ring would be 60% off. Ms. Szumonski
21 made a false statement to Loss Prevention when she said, " the
22 morning of the sale she told Plaintiff that the ring was not
23 included under the 60% discount sale."

24 b. Ms. Szumonski and Ms. Davis falsely stated, among others,
25 in particular to Mr. Ruben Quinonez and Michelle Albrecht, other
26 management personnel and Loss prevention personnel that the ring
27 in questioned was not included in the 60% sale.

28 c. Ms. Davis falsely stated that she sold the ring to

1 Plaintiff because Plaintiff had said, "Remy Songco said the
2 ring was included in 60% discount." Plaintiff had requested to
3 buy the ring, advertised in a MCX/MCCS flyer with a 60% discount
4 from the Sales Associate Ms. Davis. Plaintiff did not tell
5 anyone that Ms. Songco had said the diamond was not included in
6 the 60% discount sale. Ms. Davis and Ms. Kaspick, and Ms.
7 Szumonski made false statements to management and other
8 employees that that Plaintiff said to Ms. Davis that, "Ms.
9 Songco had approved the 60% sale price of the ring."
10

11
12 d. Ms. Davis signed a false statement prepared by Loss
13 Prevention (Mr. Quinonez) that Plaintiff had said Remy Songco
14 had approved the 60% discount, knowing that this was something
15 the MCX/MCCS Retail managers did not do and were not authorized
16 to do. Ms. Davis has stated that after the initial interview Mr.
17 Quinonez to sign a written statement outlining what was
18 discussed. "I was not comfortable signing anything until after I
19 received counsel from my attorney. After speaking with my
20 attorney I returned and agreed to sign the statement.

21 e. Ms. Davis falsely stated to Mr. Quinonez on December 19,
22 2005 that she had told the Plaintiff she was not sure the S&S
23 ring was on sale, but that after the Plaintiff, "told her she
24 asked Remy and Remy said it was included." Ms. Davis falsely
25 stated to Ms. Hanrahan she was intimidated by the Plaintiff into
26 selling the S&S ring at the authorized 60% discount.

27 f. Ms. Davis stated in her deposition that S&S pretags all
28 their jewelry and that when they're in the showcase, they have

1 tags and that is the correct sale price for that day. Ms. Davis
2 stated, among others, that the management or manager of S&S
3 would decide which item is going to be placed on the brochure;
4 and that Remy Songco did not have authority to give a certain
5 discount to S&S jewelry pieces. Ms. Davis stated that each piece
6 of jewelry that is being sold by S&S was always tagged with the
7 correct price and that the price was there on the ring. Ms.
8 Davis knew the price (60% discount was on the ring.

9 g. On December 14, 2005 Ms. Ottobre forwarded Ms. Hanrahan's
10 email to the MCX/MCCS Human Resources Office adding that she
11 told Plaintiff the ring was not included in the sale.

12 h. Ms. Kaspick stated to management and other personnel that
13 Plaintiff had made an unauthorized purchase of the diamond ring,
14 when she knew full well that the diamond ring was tagged at a
15 60% discount. Ms. Kaspick further falsely reported to management
16 that Ms. Szumonski, the jewelry supervisor, had previously told
17 Plaintiff that the ring would not be included in the 60% sale.

18 i. Mr. Thomas, Mr. Flanagan and Mr. Quinonez conspired among
19 themselves to obtain false allegation from witnesses.

20 j. Ms. Songco falsely stated to management and to Human
21 Resources that she had told Plaintiff that the diamond ring was
22 not included in the 60% sale.

23 k. On December 13, 2007 Ms. Hanrahan sent her supervisor,
24 Suzanne Ottobre an email reporting false information provided to
25 her by Zenaida Kaspick.
26
27
28

1 56. The Statements made by the Defendants as stated, supra in
2 paragraphs (55 a-k) were in fact untrue. The true facts were as
3 follows:

4 On December 13, 2005, Plaintiff purchased a diamond cluster ring
5 advertised in the MCX/MCCS flyer, displayed in the showcase and
6 pre-tagged by S&S/Ms. Kaspick at 60% discount from Ms. Davis
7 during her lunch hour. When she (Plaintiff) returned from lunch
8 her supervisor, ms. Remy Songco called her in her office and
9 asked her what she had purchased and she told her and showed her
10 the jewelry. Shortly thereafter, Ms. Hanrahan and Ms. Kaspick
11 came into the room and told her that the ring was not on sale at
12 60% off. When Plaintiff heard this she (Plaintiff) returned the
13 ring immediately. The following Monday, Plaintiff was called and
14 was escorted by Ruben Quinonez to Mr. Thomas office in another
15 building. There she was grilled, questioned, intimidated,
16 harassed, forced to admit that she defrauded the store. Mr.
17 Thomas banging on the desk forcefully in front on Glo Emde and
18 Mr. Quinonez. The mistreatment continued for more than three
19 hours. When Plaintiff refused to admit to the fraud, Mr. Thomas
20 told her that she was suspended indefinitely without pay and was
21 escorted out of the building and military base like she was a
22 dangerous criminal.

23 57. Defendants had misrepresented or concealed that certain
24 facts herein as described in the paragraphs 55 and others above
25 with the malicious intention of depriving Plaintiff of her money
26 and property, thereby justifying an award of punitive damages.

27 WHEREFORE Plaintiff prays for damages as hereinafter provided.
28

VI

FIFTH CAUSE OF ACTION

[CONSPIRACY WITH INTENT DEFRAUD]

58. Plaintiffs reallege and incorporate herein Paragraphs 1-58. as though fully set forth herein.

59. As alleged above, on or about December 19, 2005, and continuing to the present time, Defendants agreed and knowingly conspired between themselves to defraud Plaintiff.

Under this conspiracy, Defendants agreed to have Plaintiff falsely accuse the Plaintiff of purchasing a diamond solitaire ring in an unauthorized manner, by concocting false allegations and procuring false statements from witnesses. Defendants further agreed to coerce Plaintiff to resign and retire by placing her in fear and intimidation of being accused of a crime.

60. Defendants did the acts and made the statements as herein alleged pursuant to, and in furtherance of, the conspiracy and agreement alleged above.

61. At all times Defendants knew Plaintiffs had purchased a ring lawfully and that it had been advertised in the MCX/MCCS flyer at a 60% discount. Defendants knew that Plaintiff had not made certain alleged false statements in the purchase of the ring.

62. As a result of the conspiracy between the defendants Plaintiff has been suffered injured to her reputation, embarrassment, humiliation, financial an emotional stress.

63. WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For compensatory damages
2. For general damages according to proof at trial;
3. For special damages according to proof at trial;
4. For exemplary or punitive damages for the Fraud Conspiracy to Defraud and defamation.
5. For cost of suit herein incurred.

VII

PRAYER FOR RELIEF

64. WHEREFORE, Plaintiff request relief as follows:

- (1). For special and economic damages, including back pay and front pay, for all cause of action;
- (2). For general damages and non-economic damages;
- (3). For punitive damages according to proof ;
- (4). For an award of interest, including prejudgment interest at the prevailing legal rate;
- (5). For cost of the suit, including reasonable attorney fees required by statutes;
- (6). For mental and emotional distress damages;
- (7). For compensatory damages, including lost wages, lost employee benefits, bonuses, vacation benefits, and other special and general damages according to proof; and
- (8). For such other and further relief as the Court may deem proper.

Date 5/16/08

LAW OFFICE OF BONITA P. MARTINEZ

BY: Bonita P. Martinez

Bonita P. Martinez, Esq.
Attorney for Plaintiff,
Della V. Opinion

JURY DEMAND

Plaintiff demands trial by jury in this action.

JS 44 (Rev 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Delia V. Opinion

DEFENDANTS

United States Navy & Marine Corps; Susan Ottobre, Bonita David, Mark Burhart, Jack Flanagan, Thomas, Ruben Quinonez, Remy Songco, Zenaida Kaspiak, Sandberg & Sikorski, Marili Szumonski, Ligaya Davis and Does 1 through 10, inclusive.

(b) County of Residence of First Listed Plaintiff San Diego, California
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bonita P. Martinez, Esq., SBN 153346 (619)291-8166
2918 Fifth Avenue Suite 204
San Diego, California 92103

BY: (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV U944 BEN-NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 111A (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Recopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

Age Discrimination in Employment Act of 1967

Brief description of cause.

Age and National Origin discrimination arising out of an unlawful suspension and coerced retirement.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$400,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
5/28/08

SIGNATURE OF ATTORNEY OF RECORD

Bonita P. Martinez

FOR OFFICE USE ONLY
RECEIPT # 15329

AMOUNT \$350

APPLYING IFP

JUDGE

MAG JUDGE

American LegalNet, Inc.
www.FarmsWorkflow.com

6/3/8 10:59 689 619

MAY-28-2008 08:37 FROM

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

151329 - MB

**May 28, 2008
16:29:14**

Civ Fil Non-Pris

USAO #: 08CV0944

Judge.: ROGER T BENITEZ

Amount.: \$350.00 CK

Check#: BC916

Total-> \$350.00

**FROM: DELIA V OPINION VS US NAVY &
MARINE CORPS, ET AL**